

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

ESTATE OF SHANNON J. PAYNE, By
its Special Administrator,
CHRISTOPHER MEISEL,

Plaintiff,

Case No. 20-CV-0512

-VS-

DANE COUNTY; SHERIFF DAVID J.
MAHONEY; ABC INSURANCE
COMPANY, and JOHN DOES 1-20,

Defendants.

Examination of KERRY PORTER,
taken at the instance of the Plaintiff, under and
pursuant to the Federal Rules of Civil Procedure,
before ALICE M. BARBELN, a Registered Professional
Reporter and Notary Public in and for the State of
Wisconsin, via Zoom videoconference, on
June 16, 2021, commencing at 9:29 a.m. and concluding
at 12:04 p.m.

A P P E A R A N C E S

CADE LAW GROUP, LLC, by
MR. NATE CADE,
4411 North Ardmore Avenue,
Shorewood, Wisconsin 53211,
appeared via Zoom on behalf of the Plaintiff.

MUNICIPAL LAW & LITIGATION GROUP, S.C., by
MR. MATTEO REGINATO,
730 North Grand Avenue,
Waukesha, Wisconsin 53186,
appeared via Zoom on behalf of Defendants Dane
County, Sheriff David J. Mahoney, and John Does
1-20.

* * * * *

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TRANSCRIPT OF PROCEEDINGS

KERRY PORTER, called as a witness herein, having been first duly sworn on oath, was examined and testified as follows:
(Exhibit Nos. 1 through 8 were previously marked.)

EXAMINATION

BY MR. CADE:

Q Good afternoon, Captain. Could you please state and spell your name?

A My name is Kerry, K-E-R-R-Y, and last name is
Porter, P-O-R-T-E-R.

Q And you are a captain with the Madison -- or, I'm sorry, the Dane County Sheriff's Office?

A Yes, captain of security services and the jail administrator.

Q How long have you been with Dane County?

A I've been with the Dane County Sheriff's Office for almost 24 years in a variety of different capacities, but with the sheriff's office for 24.

Q And how long have you been the captain of security services?

A Since September of last year, September of 2020.

1 Q Okay. I'll get into your work history in a
2 moment. Captain, have you been deposed before?

3 A Not that I recall, no.

4 Q Oh, wow, okay. So I'm sure you may have gone
5 over this with Matteo, but there is just a few
6 rules for depositions. One of the first rules,
7 which is more than important because we are
8 doing it by video, is allow me to finish asking
9 the question before you give an answer. Our
10 reporter here, Alice, is phenomenal, a very
11 good reporter; however, over video, if I start
12 asking questions and you start jumping in and
13 vice versa, it could end up that the transcript
14 gets a little discombobulated, so very
15 important to allow me to finish asking the
16 question before you answer. The other reason
17 that's important is I might start asking you a
18 question and realize that Matteo, who is a very
19 worthy adversary, is going to likely object, so
20 I might start asking a question, and in the
21 interim, I stop myself and either reframe it or
22 ask you a different question to deal with what
23 I perceive to be an upcoming objection, so very
24 important to allow me to finish asking it
25 completely before you give an answer.

1 A Okay.

2 Q Same holds true for -- you were doing some
3 nodding of the head, nothing wrong with that,
4 but if you are answering and you just nod your
5 head, meaning yes, or, you know, I have a
6 sister-in-law that just nods her head like
7 she's listening but she's really not, you might
8 hear me say, "Is that a 'yes'"? I'm not doing
9 it to be rude. I just know in the
10 transcript all Alice can put down is witness
11 nods head," and then down the road, we are
12 having this fight over, did Captain Porter nod
13 his head because he meant yes, or was he being
14 just nice to me. So if you nod your head or
15 you say something like "uh-huh" or "uh-uh," I
16 have to turn around and say, "Is that a 'yes'"?
17 because I want to make sure the transcript is
18 clear. Having done, you know, 1,500 of these
19 things, I can, in my head, see how it is being
20 typed, fair?

21 A Fair enough. Understood, thanks.

22 Q And as I indicated a moment ago, you also have
23 to be a give a verbal response, so "uh-huh" and
24 "uh-uh" does not cut it. You'll need to say
25 yes or the answer, or, same thing, I'll say,

1 "Is that a yes" or ask you for a verbal
2 response.

3 If I ask a question that you don't know
4 the answer to or if I'm asking it and you are
5 confused, maybe I'm not putting it in the right
6 lingo or jargon or something like that, let me
7 know. I'll try to rephrase. If I cannot
8 rephrase or fix it, Matteo and I will put our
9 heads together over the internet and maybe we
10 can figure out a question for you to answer
11 that's put to you, fair?

12 A Fair.

13 Q If for whatever reason you need to take a
14 break, something comes up at the office,
15 bathroom, whatever, I have no problem taking
16 breaks. I'm hopeful this will only go a couple
17 of hours, but if you need to take a break,
18 please answer the question that's pending
19 before you take a break. I don't like to take
20 a break and have a question just sitting out
21 there, fair?

22 A Fair.

23 Q And, finally, for purposes of this deposition,
24 I will assume that if you gave a response to a
25 question, you understood the question being

1 posed to you, fair enough?

2 A Fair enough, yes.

3 Q So let's go back to where we were. You had
4 been -- indicated that you had been in your
5 position since September of 2020, and you have
6 been with Dane County for -- the sheriff's
7 office for 24 years. Prior to that assignment,
8 what was your prior assignment?

9 A Prior assignment, I was lieutenant in charge of
10 our detective bureau, so investigations
11 lieutenant.

12 Q And is that investigations internal, external,
13 or both?

14 A That would be just external in our field
15 services division for our detective bureau, so
16 just external.

17 Q Great, and how many, as lieutenant of the
18 detective bureau, were you the only lieutenant,
19 or did you share duties with one a day, one a
20 night lieutenant?

21 A No, just me, and I had a sergeant in the
22 detective bureau that worked under me, and 27
23 detectives.

24 Q So everything from homicides, drugs, things of
25 that nature?

1 A Correct.

2 Q And how long were you a lieutenant of the
3 detective bureau?

4 A Approximately three-and-a-half years.

5 Q And prior to that, where were you?

6 A I was the records custodian in our support
7 services division.

8 Q That was a crappy job, I bet.

9 A It was, and I was a lieutenant there as well.

10 Q Who did you make mad that got you stuck there?

11 A It was actually a very good learning
12 experience. At times it was not an enjoyable
13 assignment, but it was a good learning
14 experience.

15 Q Okay. And how long were you in that position?

16 A Approximately a year.

17 Q And before that, where were you?

18 A I was our second shift officer in charge for
19 the agency, and as a lieutenant as well.

20 Q What is the second shift officer in charge of,
21 what's that entail?

22 A So when captains and other lieutenants that are
23 assigned to Monday through Friday or day shift
24 hours leave and go home, it falls on the
25 officer in charge, and so you oversee the --

1 all four divisions as a resource and as the
2 officer that would make final decisions. We
3 would have supervisors that would be specific
4 to each division, but as the officer in charge,
5 they would refer to you for supervision.

6 Q And I'm assuming that you were second shift, so
7 you were the only full OIC for second shift,
8 but there would be an OIC for first shift, one
9 through third?

10 A Correct.

11 Q And how long in that position?

12 A Longer than five years. I think it was between
13 five and six years.

14 Q Any education post high school?

15 A Yes. I have a bachelor's degree in
16 criminology.

17 Q From?

18 A University of Southern Maine.

19 Q Are you from Maine?

20 A I am, born and raised.

21 Q wonderful area. I went to high school out
22 East, so I love that area.

23 other than the bachelor's degree from
24 Southern Maine, anywhere else?

25 A It isn't a degree, but I'm a graduate of FBI

1 National Academy.

2 Q Any other post secondary education other than
3 the, you know -- I know you go through training
4 and all that stuff, so I'm not dealing with
5 that stuff, but anything else that they
6 formally hand you a piece of paper outside of
7 the sheriff's department?

8 A No.

9 Q So, Captain, we are here due to the death of
10 Shannon Payne on December 27, 2016. Are you
11 familiar with that?

12 A I am -- I'm familiar with it only since being
13 advised of the deposition. I didn't go into
14 great detail and go through all of the reports
15 to get a significant -- but I wanted to have at
16 least a baseline understanding of the case
17 itself, so, yes, very recently it has become my
18 understanding at least in a general way of
19 Shannon Payne's case.

20 Q Okay. So I'm going to ask you some questions,
21 and then from there, I might show you some
22 documents. So walk me through, since you are
23 the captain of security services and jail
24 administration, a person is arrested or there
25 is a probation hold, whatever, they come into

1 the jail, so whether it's a sheriff's deputy
2 that brings them in, maybe a police officer
3 from the City of Madison or one of the
4 surrounding entities or even probation agent,
5 they bring them to the jail for you to hold,
6 the jail to hold. What steps occur after that?

7 MR. REGINATO: I would object to
8 form, also foundation.

9 MR. CADE: You can answer.

10 THE WITNESS: Okay. So the process
11 -- I'll kind of start at the beginning. Let's
12 assume it's a street arrest from either our
13 agency or a municipal agency, the subject would
14 be taken into custody, brought to the Dane
15 County Jail. We have a vehicle sally port that
16 the squad or other transport vehicle would be
17 brought into. They would then take their
18 arrestee out of the back of the squad and walk
19 them into a search area at the first floor
20 level just inside -- so the doors would close
21 behind them when they go into the vehicle sally
22 port, then somebody would open a slider door
23 for them to come in a search area of the Dane
24 County Jail.

25 BY MR. CADE:

1 Q Okay.

2 A We consider that area somewhat unsecure at that
3 point because it's still a search area where we
4 would be checking. As it existed in 2016, we
5 would be relying on the arresting agency that
6 they have done at least a pat-down search of
7 that person to detect any weapons or anything
8 that might be harmful or not allowed in the
9 jail before they enter, but, at that point,
10 that arrestee would still be in street clothes.
11 Once they are into that search area, our
12 booking deputy would go through a series of
13 paperwork with the names and get the charge
14 information or the hold information or any
15 other type of legal documents for being able to
16 detain the -- their subject.

17 Q Okay.

18 A When that is completed and the booking deputy
19 is satisfied they have all the information that
20 they need, all the correct paperwork is filled
21 out, that person then gets changed over into a
22 jail uniform, and we do -- our people here at
23 the jail then conduct a search before entering
24 the secure proper area of the jail. The
25 booking process then takes place. There is a

1 booking clerk that gets additional information.
2 we do photographs and fingerprints, and then
3 they are moved to a temporary housing location
4 on the first floor of the jail.

5 Q Okay. So if I could break that down, if you
6 don't mind. First, at some point, did the --
7 in 2016, did the procedure -- or after 2016,
8 did the procedure change, in terms of how the
9 search for the person is brought in change?

10 A Yes, slightly it did. We now -- as it exists
11 today, the arresting agency brings that subject
12 into the search area while they are still in
13 the vehicle sally port. One of our people goes
14 out and conducts a thorough pat-down search at
15 that location before entering the search area.

16 The other thing of significance that
17 has changed today compared to 2016 is we did
18 not at that time have the existence of body
19 scanners.

20 Q Okay.

21 A We currently have a body scanner that all of
22 our new detainees go through. Those were
23 purchased in 2018.

24 Q And why was a body scanner -- is there more
25 than one?

1 A There is one in the booking area. We also have
2 a second one where inmates having Huber
3 privileges or other work release privileges
4 when they return from anyplace outside the
5 confined area of the jail, we also utilize
6 those body scanners when they return.

7 Q And can you tell me, when those were purchased
8 in 2018, the reason why they were purchased?

9 MR. REGINATO: Object to foundation.

10 THE WITNESS: They were purchased as
11 a means to detect contraband and prevent it
12 from coming into the jail.

13 BY MR. CADE:

14 Q Do you know if there was an issue with
15 contraband prior to the purchase of the
16 scanners such that there was a need to purchase
17 scanners?

18 MR. REGINATO: Object to foundation
19 and form.

20 THE WITNESS: The purchase of the
21 body scanners was something that we felt would
22 be a better, less intrusive way of detecting
23 contraband and possibly a more effective way of
24 preventing contraband from entering the jail.

25 BY MR. CADE:

1 Q well, let me reframe the question. In -- prior
2 to 2018, and going over areas of your history,
3 you at least had time as an officer in charge
4 for about five to six years for second shift,
5 correct?

6 A Correct.

7 Q And as the officer in charge during that time
8 period, would you have also been the OIC over
9 jail administration? So if someone were to
10 come into booking, technically you would be,
11 short of a captain or someone else, you would
12 it be highest-ranking person in that process?

13 A Yes. I wouldn't be physically present in the
14 jail. I wasn't physically located there, but
15 if there was a concern that they didn't feel
16 they -- so we would have supervisors that were
17 on all the shifts in the jail, sergeants, so if
18 there was something that came up that the
19 sergeant felt they needed to consult with the
20 lieutenant about, they would -- that would be
21 me.

22 Q Right, right. And I'm not insinuating that you
23 had to be the one physically there and doing
24 the searching and all that; what I'm asking for
25 is I'm just trying to figure out if for the

1 time period that you were there -- so if my
2 math is right, that would roughly be 2010 to
3 2015, somewhere in there?

4 A Yeah, that would be correct. I was trying to
5 run that through my head too. That was right
6 about the time I moved in 2016 -- late 2016,
7 maybe it was actually early 2017 when I went to
8 records custodian, but it was right about that
9 time.

10 Q Okay. So while you were the OIC during that
11 time period, were there incidents of contraband
12 being snuck into the jail?

13 A Yes.

14 Q And correct me if I'm wrong, I would seem to
15 think there are three ways that contraband gets
16 in, and I'm dealing with drugs, not weapons or
17 anything else, not phones, but one would be
18 through an inmate, whether the person is being
19 booked or Huber. One would be through guards,
20 you know, or corrections officers, deputies,
21 whatever, so employees; and then the third
22 would be if you have any other extraneous
23 outside vendors, say, for example, like a food
24 vendor or a medical vendor, fair?

25 A I think you are right there, but there are also

1 additional ways that contraband could
2 potentially enter the facility as well. We are
3 pretty diligent about it, but there have been
4 times that through the mail system or other
5 packaging that comes into the facility. You
6 had mentioned the outside vendors, but also
7 through visitation. Of course we have
8 processes that we would want to search and do
9 our best to prevent that, but there is
10 potentially, for mail and exchanges during
11 visitation, like you mentioned outside vendors,
12 new arrests coming into the facility, inmates
13 that are free to come in and out of the
14 facility with Huber privileges or other work
15 relief privileges, but, yeah, so there was a
16 few additional ones, but, yes, you are correct.

17 Q Okay. So if I break that down, I'm going to
18 put corrections officers and deputies to the
19 side. I presume that vendors, whether that's
20 food or medical, et cetera, they are not
21 necessarily searched when they come in; is that
22 a fair assumption?

23 A They are not -- typically for food, the
24 containers, the food containers and carts and
25 those type of things are searched, but not

1 necessarily the vendors themselves, but we do
2 have a process for jail access which looks at a
3 variety of things, such as arrest history, and
4 we do a basic background check and jail access
5 authorization for those employees to minimize
6 risk, but to answer your question,
7 specifically, no, they are not searched when
8 they come in and out.

9 Q And the reason I'm saying that is just -- I
10 mean, I know obviously you do security and all
11 that stuff and background, and you don't want a
12 drug dealer being a food vendor because that's
13 just a target-rich environment, but generally
14 when -- when the food vendors come over, it's
15 not like they are getting a pat-down or a strip
16 search or anything like that, fair?

17 A That is fair.

18 Q Okay.

19 A And to clarify a little bit further too, and
20 maybe just semantics, but with vendors, we also
21 -- beyond vendors, we have a number of programs
22 that come in, you know, NA, AA, different types
23 of volunteers that come in for help for
24 reentry, inmate betterment programs, and they
25 don't necessarily get searched each and every

1 time they come in.

2 Q Sure. And is it -- all right. So let's assume
3 -- and I'll come back to going over the issues.
4 Let's assume I'm a brand-new inmate. I have
5 done wrong. I've been arrested. I go through
6 the sally port, and they do the pat-down.
7 After they do the pat-down, whoever brings me
8 in, then the jail issues me a new uniform,
9 correct?

10 A Correct.

11 Q And prior to the new uniform or after the new
12 uniform, do they do a strip search?

13 MR. REGINATO: Object to foundation.

14 THE WITNESS: The strip search is
15 largely dependent on whether they are sentenced
16 or unsentenced subjects. We would, in most
17 cases, not be doing a strip search on a new
18 arrestee.

19 BY MR. CADE:

20 Q Okay.

21 A That would be -- we would do, and as the policy
22 indicates, in 2016, the portion for that
23 changeover, we would be observing the inmate
24 change from their street clothes into the jail
25 uniform, but it would not be a strip search.

1 If they were a male, they would continue to
2 have on their underwear, possibly a T-shirt,
3 and just change into that uniform, and they
4 would hand us the street clothes.

5 Q Okay.

6 A A female would continue to -- if she had a
7 brassiere, underwear, those types of things, so
8 it would not be a strip search as a new arrest
9 that comes into the facility, in most cases.

10 Q You say "in most cases." Are there exceptions?

11 A There are. Some of those exceptions are a
12 sentenced inmate that is to our facility if,
13 for example, one of our people that were out on
14 work release were to be arrested, and a new
15 charge came in, they would get sentenced and
16 brought to our facility, we would be strip
17 searching them.

18 Q Sorry, with Zoom, I misheard that. So someone
19 who has already been sentenced but is out, like
20 probation or something like that, if they come
21 back in, they are considered sentenced?

22 A Not probation unless they were -- unless they
23 were specifically sentenced to the Dane County
24 Jail to serve sanctions on -- as a sentence.
25 If it was somebody that was out on our

1 electronic monitoring program that's serving a
2 year for an OWI, for example, was to be
3 rearrested and brought into our jail, we would
4 then -- we would likely strip search that
5 person if they were a sentenced inmate. And
6 there are other circumstances that allow us to
7 strip search someone who is not a sentenced
8 inmate, but it needs to be reasonably
9 articulated why we are -- why we would want to
10 do that strip search, like that we would have
11 an articulable reasonable suspicion that they
12 are concealing contraband, weapons, or other
13 contraband that we would not want in the
14 facility. So if the arresting officer
15 communicates with one of our deputies that we
16 believe that they are concealing a weapon or
17 contraband and they can articulate why we would
18 -- if they can articulate reasonably why they
19 believe that they're possibly concealing
20 contraband, then there would be a request to a
21 supervisor to approve a strip search. That
22 supervisor would then scrutinize the request
23 and either approve or deny that request for a
24 strip search for an unsentenced inmate.

25 Q So if, say, I'm on a probation hold, I'm

1 brought in on a hold, would I be strip
2 searched?

3 A Not as a straight hold, no.

4 Q Okay. But that's someone who has been
5 sentenced, right?

6 A For our policy -- and our policy indicates
7 specifically that if it's a straight hold, we
8 consider that an unsentenced inmate and treat
9 them as an unsentenced inmate.

10 Q Okay. So explain to me -- so in 2018, now,
11 everybody comes through, goes through the
12 scanner, every prisoner; is that correct?

13 A Correct, unless they indicate they are pregnant
14 and they are female, obviously, with the
15 radiation-type issues with a body scanner, we
16 would do a more traditional pat-down search
17 that we did prior to, but, yes, for the most
18 part, yes, everything that comes in goes
19 through the body scanner.

20 Q So why then has the policy changed in terms of
21 the -- using the body scan on everybody, other
22 than a pregnant female, if you are now doing
23 someone who is, you know, a new arrestee,
24 someone who is on probation hold, whatever, was
25 there a rationale for why that policy changed,

1 if you know?

2 MR. REGINATO: Object to foundation
3 and form.

4 THE WITNESS: Yeah. I believe we
5 feel that the body scanner is very different
6 than a strip search. The body scanner is an
7 image, but it's not -- let me see if I can
8 explain. So the strip search is much more
9 intrusive in nature, and our policies will try
10 to respect the rights and the privacy and the
11 dignity of the person being searched, and it
12 seems much more intrusive for an actual strip
13 search than the body scanner. The body scanner
14 is very similar to what you would find when you
15 go through TSA at a security checkpoint in the
16 airport.

17 BY MR. CADE:

18 Q well, I guess I should have asked this earlier:
19 Do you know, on a given day, on average how
20 many people are not -- ignore the Huber folks
21 for a moment, but just everybody being brought
22 in for booking, sally port, whatever, how many
23 prisoners are coming through on a daily basis?

24 A It would vary widely day to day, but --

25 Q Outside of Badger games?

1 A Yeah. You know, I don't know the number. I
2 think it would be safe to say more than 30.

3 Q Okay. More than 50 on average or less than 50?

4 A I don't know. On a busy day, likely more than
5 50.

6 Q Prior to -- well, let me ask you this: Since
7 the scanners have been in place, have you
8 detected prisoners coming in trying to conceal
9 drugs?

10 A Yes.

11 Q And prior to the scanners, especially while you
12 were the OIC, did the prison have issues with
13 new inmates -- or new prisoners bringing in
14 contraband drugs?

15 A I'm sorry, can you repeat that one more time?

16 Q Sure. That was not articulate, so I'll
17 rephrase.

18 Prior to the scanners, so prior to
19 2018, did the jail have issues with prisoners
20 bringing in drugs who had not been searched?

21 MR. REGINATO: Object to form.

22 THE WITNESS: I guess you would have
23 to define "issues." Did it ever come in?
24 Probably the answer is yes, and I guess it
25 depends on how you define issues.

1 BY MR. CADE:

2 Q Okay.

3 A I will say that I believe we were effective
4 with mitigating contraband from coming into the
5 facility.

6 Q And how would you have been effective in
7 mitigating contraband from coming into the
8 facility?

9 A It being detected during the custodial
10 searches.

11 Q Do you mean pat-downs?

12 A Correct. And in the custodial searches, it's a
13 little different than the pat-down as they are
14 changing into the uniforms and handing their
15 personal clothing over, even though we are not
16 strip searching and going beyond that base
17 layer of clothing, that being the underwear, we
18 would still recover contraband as people were
19 attempting to come into the facility with it.

20 Q Okay. But you would agree that if you are not
21 doing a strip search prior to 2018, if
22 contraband is in someone's rectum, for example,
23 you wouldn't discover it absent a strip search,
24 fair?

25 MR. REGINATO: Objection, calls for

1 speculation.

2 THE WITNESS: Yes, and with a strip
3 search, even with a strip search, we may not
4 detect contraband coming in the facility if it
5 was in the rectum.

6 BY MR. CADE:

7 Q Sure. Are you aware, and especially during the
8 time you were the OIC, of whether strip
9 searches were conducted in which drugs were
10 found in prisoners' rectums or in the scrotum
11 area or something like that?

12 A Not in the rectums unless it was visible by the
13 naked eye without any type of further being
14 just visible to the naked eye as the person
15 bent over and we could visually see that, but,
16 yes, we did detect contraband during strip
17 searches.

18 Q And prior to the installation of the scanners,
19 do you know how often that occurred?

20 A I don't.

21 Q I'm assuming when you were the OIC, you would
22 be given an alert: Hey, we did a strip, and we
23 found drugs?

24 A Yes. I would usually be notified, and if I
25 wasn't notified, it would be something that

1 would go into the supervisor logs at the end of
2 the shift that would -- and the log is just
3 something that they would -- anything that --
4 noteworthy that occurred during the shift, they
5 would create a log, and so that is passed onto
6 the next shift and for all the supervisors that
7 are not at work to see it later on, so it's
8 kind of a briefing-type information that goes
9 in there.

10 Q Sure. And so -- I'm sorry, can you repeat that
11 last part?

12 A Sure. That type of information is certainly
13 something that would qualify to go into the
14 briefing log.

15 Q And so in those five-and-a-half years where you
16 were the OIC, was this finding drugs or
17 contraband as part of a strip search, would it
18 happen at least monthly, once a month on
19 average you would find something?

20 A I don't know. It would seem reasonable.

21 Q And after the drugs were found, was there any
22 sort of after-action report or any sort of
23 post-search report amongst the supervisors and
24 the folks in the know as to, hey, this
25 happened, we need to start looking for drugs in

1 this way, we need to start searching for
2 contraband in that way, anything like that?

3 A No, not that I'm aware of; however, a strip
4 search does require a report that's titled,
5 "The strip search," so it is queryable
6 information for administration that certainly
7 could look at, so I don't know if that occurred
8 or didn't occur, but the purpose for titling
9 that in a specific way -- titling that in a
10 specific way makes that search easier so we
11 could query that for the number of strip
12 searches we have completed in whatever
13 timeframe you want to look at, and then in the
14 details of the report would be whether they
15 found contraband or didn't find contraband
16 during that strip search. I don't know that
17 that was done on a routine basis for compiling
18 that information, but that's the purpose of it,
19 and they certainly could do that if they chose
20 to do so.

21 Q And every time a strip search is done, you say
22 there is a report that's prepared?

23 A Correct.

24 Q And would the booking officer, whoever is down
25 there, is that the person doing the report, or

1 is it someone doing the strip search or the
2 sergeant? who is preparing the report for the
3 strip search?

4 A The report is completed by the person who
5 actually does the strip search who completes
6 it.

7 Q And while you were the OIC, did you have
8 instances where strip searches were done but
9 reports were not prepared, or did you have
10 knowledge of that?

11 A I did not have knowledge of that, no.

12 Q So every time a strip search was done, as far
13 as you know as the OIC, there was a report that
14 was subsequently prepared with it?

15 A Correct.

16 Q And prior to the scanners, do you know how
17 often daily or weekly strip searches were done?
18 Are we talking 5 times a day, 20 times a day, 1
19 time a day?

20 A I don't know the answer to that.

21 Q Okay. what would you think on a daily or
22 weekly basis would be the number, roughly?

23 MR. REGINATO: Object, calls for
24 speculation.

25 BY MR. CADE:

1 Q I'll rephrase. You indicated that when there
2 is a strip search, there is some sort of log
3 that's created, correct?

4 A Yes.

5 Q And that would be something that you would
6 review on your next shift; so if there was a
7 strip search on third shift and first shift,
8 when you start the second shift, you would see
9 this log and be able to look at that, fair?

10 A No, not exactly. So a strip search that was
11 conducted that would result in the finding of
12 contraband, that's something that would
13 probably be newsworthy to include into the log.
14 If it was a strip search that was completed
15 that didn't result in locating contraband,
16 that's probably not something that would go
17 into the shift log.

18 Q Okay. would strips be performed on Huber
19 inmates prior to the scanners?

20 A Yes.

21 Q So every time they came in, Huber inmates would
22 be strip searched?

23 A Probably not every time they came back into the
24 facility but on a much more frequent basis.

25 Q what's the distinction, really, between a new

1 prisoner coming in and a Huber prisoner?

2 A The sentence status, for the most part.

3 Q And I apologize. That was a bad question.

4 You would agree with me that if
5 someone is out on Huber, that essentially is a
6 privilege that they get to be out during the
7 day before they come into the jail, true?

8 A True.

9 Q And if someone is caught doing something wrong
10 while on Huber, they most likely would lose
11 that Huber privilege, right?

12 A Yes.

13 Q So is it more likely or less likely that a
14 Huber prisoner would bring in contraband as
15 opposed to a prisoner who was freshly arrested?

16 MR. REGINATO: Objection, calls for
17 speculations, lacks foundation.

18 THE WITNESS: You know, I don't know
19 if I can answer that. I don't know.

20 BY MR. CADE:

21 Q Do you have any sort of statistics -- let me
22 back up. While you were the OIC, how often did
23 Huber inmates -- did you find contraband on
24 them? Was that a daily basis or weekly?

25 A I don't know.

1 Q How long does it take to do a strip search if
2 it's done proper?

3 A I would venture to say probably five minutes.

4 Q And in those five -- well, let me back up. A
5 booking officer who is dealing with an inmate
6 coming in, if they feel they are busy, are they
7 likely to not do the strip search? Bad
8 question.

9 Does the booking officer have
10 discretion in terms of whether or not they do a
11 strip search?

12 A No -- well, again, it's -- it will make a
13 difference on the sentenced versus unsentenced
14 status, but if they are going to do a strip
15 search on a new arrestee that is not a
16 sentenced inmate of ours, then they don't have
17 the discretion other than they may have the
18 discretion that they could ask the supervisor
19 based on, "I have reasonable suspicious to
20 believe that this person may be concealing
21 contraband," whether that be weapons or drugs
22 or other.

23 Q But if someone is a sentenced prisoner who
24 comes back into the jail, they are to be strip
25 searched 100 percent of the time?

1 A No, but they would have discretion on whether
2 they choose to do a strip search on that inmate
3 that's coming back that's our sentenced inmate.
4 They don't do it 100 percent of the time but on
5 a much more frequent basis.

6 Q Right. And so that's what I'm trying to figure
7 out -- I'm sorry, you cut out.

8 A They would have that discretion, yes. On a
9 sentenced inmate coming back to the facility,
10 the deputy would have the discretion of whether
11 they choose to do a strip search or not to do a
12 strip search for that inmate.

13 Q Okay. And are they -- well, are there
14 statistics that are kept prior to the scanner
15 in terms of who was working the booking area
16 and how many strip searches they did? So, you
17 know, Officer Smith or Deputy Smith, you know,
18 would do three a shift; Deputy Jones would do
19 zero or one a shift. Did you ever have any
20 sort of statistics to figure out if someone was
21 more likely to do a strip search or less likely
22 to do a strip search?

23 A Not that I'm aware of, but it's definitely
24 easily queryable information.

25 Q whether they have done a strip search?

1 A Correct.

2 Q Okay.

3 A How many strip searches have been done and who
4 would be queryable information in our system.

5 Q Okay. So is that something that -- do you know
6 whether the person who had your position
7 previously, whether that was ever looked at,
8 you know, for profiling purposes, or maybe one
9 deputy is more sadistic and enjoyed making
10 people take off their clothes and doing a strip
11 search; do you know if that was ever performed?

12 A I don't know, but that would be more likely on
13 a complaint basis.

14 Q Okay.

15 A We may look at something like that, but as a
16 routine, I'm not aware of us seeking out that
17 information.

18 Q And I think I asked you this, but I want to
19 make sure: Do you know if the jail ever had
20 statistics in terms of, you know, contraband is
21 subsequently discovered in the jail -- I'm
22 dealing only with drugs -- and whether you
23 looked at whether it was more likely -- whether
24 it was a Huber individual or whether it was a
25 prisoner that comes in through the sally port,

1 did they ever do any sort of analysis as to
2 where the proverbial holes in security are?

3 A I am not aware of that -- of them seeking that
4 information for those purposes, but it
5 certainly can be done based on the -- my
6 knowledge of our system and our records
7 management system.

8 Q When you say it can be done, how do you mean it
9 can be done?

10 A So the data that goes into our records
11 management system on searches and strip
12 searches and contraband and those type of
13 things, we usually have enough codes in those
14 to be able to query the information if we -- if
15 there is -- for using the example that you just
16 provided, if we wanted to know how many times
17 contraband has been detected and what
18 classification of inmates might be having that,
19 those are -- we could go through that
20 information and find that. I'm not aware of
21 that happening, but I know that it could be
22 done based on the data that we put into the
23 system.

24 Q Okay. Turning for a moment, in your time -- so
25 from being the OIC forward, other than

1 Mr. Payne, have there been other overdose
2 deaths of inmates at the Dane County Jail?

3 A I don't know the answer to that. Did you say
4 prior to? I'm sorry. Prior to or since or
5 both?

6 Q well, both. I'm just trying to -- I said other
7 than Mr. Payne. If you wanted to focus on
8 prior to his death, that's fine.

9 A I don't know. I know we've had other
10 in-custody deaths, and I don't know if any of
11 those were a result of an overdose.

12 Q well, let me change it slightly. Do you have
13 any statistics or is it easily queryable in
14 terms of the number of, not deaths, but inmates
15 who consumed drugs and overdosed?

16 MR. REGINATO: Object to foundation.

17 BY MR. CADE:

18 Q Let me finish. Such that they are
19 hospitalized, so they didn't die. They were
20 either resuscitated, Narcan, whatever, but they
21 have definitively consumed drugs and required
22 medical attention. Any sort of statistics like
23 that?

24 MR. REGINATO: Same objection.

25 THE WITNESS: I believe we can get

1 those statistics. I don't know what those are.

2 BY MR. CADE:

3 Q And I apologize, Captain, because my notes --
4 my handwriting is bad, but I don't think I
5 wrote it down, so if someone is coming into the
6 jail on a probation hold for a violation, is
7 that person strip searched, or is that
8 discretion of the booking deputy?

9 A Generally, that person is not strip searched
10 unless the information from the arresting
11 officer or the deputy himself can articulate
12 why they believe that he may be concealing
13 contraband. That would then go to the sergeant
14 for approval. The sergeant would then either
15 approve or deny that request for a strip
16 search.

17 Q Okay. So if someone was arrested for drug
18 possession or being high on narcotics, are they
19 more likely or less likely to be strip searched
20 for contraband than someone, you know, brought
21 in because they stole a car? Do you see the
22 distinction?

23 A I do.

24 MR. REGINATO: Object to foundation,
25 calls for speculation.

1 BY MR. CADE:

2 Q In terms of an articulated reason to do a strip
3 search -- well, let me back up. The deputies
4 who do booking are given training, I'm
5 assuming, about, A, how to articulate the
6 reasons to do a strip search; and, B, in terms
7 of what they are looking for, things of that
8 nature; is that a fair question?

9 A That's fair.

10 Q Okay. So in terms of articulating a reason to
11 do a strip search, would you believe, now that
12 you are over the jail and beforehand the OIC,
13 that someone who has drug possession or drug
14 consumption is more likely to be carrying
15 contraband than someone who is arrested, say,
16 for stealing a car?

17 A As it relates to contraband being drugs, yes.

18 Q And is the fact that someone was arrested for
19 consuming or possessing drugs, is that enough
20 to be an articulable reason to do a strip
21 search to that individual prior to them coming
22 into the jail?

23 MR. REGINATO: Object to foundation.

24 THE WITNESS: In and of itself,
25 probably not. I think our supervisors would

1 probably want to see a little bit more than
2 that, just other than the fact that they were
3 arrested for a drug charge.

4 BY MR. CADE:

5 Q So when you say more than that, they would, I'm
6 assuming, look at things like, if the pupils
7 are dilated, if the person is agitated, if they
8 are shaking or if somehow indicating, you know,
9 like a sweat or whatever, that they were high
10 or coming off that high, is that an articulable
11 -- or additional articulable reason?

12 A It is additional, and some may also depend on
13 the facts of the arrest itself. If there was,
14 for example, drugs recovered from the person
15 during that arrest, probably less likely that
16 we would approve if the arresting officer said,
17 "I have paraphernalia. I have large amounts of
18 cash." I have -- "I observed what appeared was
19 a drug transaction, but I didn't recover any
20 drugs." That might be a little bit more
21 articulable of a reason why we might conduct a
22 strip search. Does that make sense?

23 Q It does. So if drugs are recovered, you are
24 saying that's less of a reason to do a strip
25 search because you've recovered drugs?

1 A Possibly. And why I'm saying that is maybe we
2 would have expected to find drugs in the
3 pockets or during our pat-down search, and we
4 didn't, so that might be something, but, you
5 know, there is a whole -- it's cumulative for
6 the circumstances. So the supervisor would
7 look at that and say, yes, that's reasonable
8 that we would conduct a strip search, or, no,
9 I'm not comfortable based on what you've
10 provided me that I'll authorize it.

11 Q Okay.

12 A There is no hard and fast rules, if that helps.

13 Q Now, after someone comes into the jail, so now
14 they have been issued their clothes, and they
15 have been booked. Where do they go then? Is
16 there a specific holding area?

17 A There is. They go to -- there is a couple
18 different places they may go. Typically, for
19 the most part, people will go to our male dorm,
20 which is just a temporary housing location,
21 until our hearing and classification staff
22 determines the best housing location for them
23 on a more long-term basis. If there is
24 significant behavioral issues or if there is
25 medical -- either high intoxication level or

1 other medical issues that we feel they need to
2 see before the nurse our jail medical staff
3 clears them for general population, they may
4 actually go to a segregation area where they
5 are in the cell by themselves.

6 Q Okay.

7 A But barring those type of circumstances, they
8 will go to a male holding area. We call it our
9 male dorm.

10 Q And that male dorm, the holding area, how long
11 are they generally held there prior to there
12 classification being determined?

13 A Generally, if we feel that they are going to be
14 staying with us, they will move out of their
15 quicker. If we think that the next day they
16 will probably have an initial appearance in
17 court, they may still be there until after
18 their initial appearance where they may get a
19 signature bond or bailed out of jail or those
20 types of things, or if they are waiting for
21 bail, we wouldn't move them out of that area;
22 so 24 to 48 hours, sometimes less.

23 On a case like a probation hold is
24 our -- and we feel like, oh, they are probably
25 going to stay here a few days until their agent

1 comes and cease them, we may -- particularly if
2 we have a history with that particular inmate;
3 they have been in our facility before; they
4 classify for this type of housing location,
5 they might go a little bit quicker. But it is
6 short term. To be simple, it's short term.
7 They wouldn't be staying there for weeks. 24,
8 48 hours.

9 Q And how many pods are there at the jail; do you
10 know?

11 A I do. So in our -- just the public safety
12 building on the third and fourth floor, there
13 are four pods on each floor, so a total of
14 eight pods.

15 Q Okay. Any others?

16 A No. We have a city/county building jail that's
17 an older linear-style jail that has more of the
18 older type of linear-style jail.

19 Q Cell blocks?

20 A Cell blocks, yes, cell blocks.

21 Q And how many are -- how many inmates are
22 roughly in each pod?

23 A Full capacity for the -- we have two different
24 styles. The large pods, we call them our 50
25 beds; and the other style is a split pod, so

1 they are just split in half, and there is 28 on
2 one side and 24 on the other, so 52 in the
3 split pods and 50 in the large pods.

4 Q How many large pods are there?

5 A Four.

6 Q So, in essence, their jail is holding roughly
7 400, 410 capacity?

8 A In the public safety building for the pods,
9 yes. Our capacity is approximately 1,100 for
10 all of our facilities.

11 Q And are the pods -- do they have different
12 categorizations, you know, like, how do you
13 explain this? I did a deposition of a -- for a
14 prison the other day, and in that deposition,
15 you know, they had different wings, and one
16 wing would be people who were, you know,
17 troublemakers, or one area where people who
18 tended to be either in need of protection, you
19 know, gay, transsexual, whatever, or older
20 inmates. Are the pods set up similarly in
21 terms of where they are assigned?

22 A Yes. So the people that would classify for our
23 pods are minimum or medium security inmates.

24 Q No maximum?

25 A No maximum unless we have administrative

1 override that allows them to go in there.

2 Q And the maximum would go to the regular jail?

3 A Yeah, the cell blocks. The maximum would
4 typically be in the cell blocks.

5 Q Is there any kind of searches or anything done
6 between going from the holding, the temporary
7 housing, to a pod?

8 A I don't think so, no, not routinely.

9 Q When an inmate comes into the jail, not a
10 Huber, but a new inmate or someone who is on a
11 probation hold, whatever, are they given
12 medical -- a medical screening?

13 A Yes.

14 Q And what typically occurs at the medical
15 screening?

16 A Our medical staff has a questionnaire that goes
17 through a large variety of questions, ask about
18 their medical history, any medications they
19 might be taking. They asked about street drug
20 use, those type of things, that might present a
21 medical problem while they are in our custody.

22 Q And if they had been in your custody
23 previously, prior to coming, you know, so
24 someone say on a hold, would you go back over
25 their -- would you go back over their history

1 and say, you know, three years ago, five years
2 ago, this person was -- you know, we know they
3 were in for narcotics or they had street drug
4 use, would you do anything like that, look at
5 the -- or whether they look at the prior
6 history?

7 MR. REGINATO: I'm going to object to
8 foundation, just on the basis of I'm not sure
9 if we are talking about the medical staff or
10 during -- because we are talking about the
11 medical process now at this point, so I don't
12 know if you are talking about the medical
13 staff, Nate, or the actual jailers.

14 BY MR. CADE:

15 Q I'm just trying to figure out -- I'll rephrase.

16 If someone is coming back into the
17 jail, so I'll use probation hold since I've
18 used that earlier, and there is a prior medical
19 questionnaire or history taken, does the jail
20 staff or the medical staff, do they look at
21 that prior history to say, hey, previously they
22 said they were allergic to, you know,
23 penicillin, and now they deny, or vice versa or
24 anything like that just to compare the prior
25 medical questionnaire to the current one?

1 A The medical staff definitely would have charts
2 from prior stays. I don't know if they compare
3 or not, but we do do a new questionnaire each
4 and every time somebody comes in the facility,
5 but they certainly would have access to prior
6 medical charts if they were here before, and I
7 don't know if they have a compare -- if they
8 compare those right on the spot or not, but
9 they -- but we do do the new questionnaire each
10 and every time.

11 Q Do you know if, when someone comes into the
12 jail, are they tested or screened for narcotic
13 use? Do you do a drug test, blood test, saliva
14 test, anything like that?

15 A Not on a new arrest.

16 Q What about a probation hold?

17 A No, but we do do them for -- like we will do
18 random urinalysis testing for our sentenced
19 inmates, more specifically for our Hubers that
20 are going in and out. We will get a baseline
21 to get an indicator of no drugs in the system
22 before we allow them out for the first time,
23 whether that be for work or volunteer, and then
24 we know if we do a random test, if we come back
25 with a positive urine test, we have already got

1 a baseline that has indicated no drugs in the
2 system, so we would have a violation on a
3 random UA further down the road, but not on new
4 arrests.

5 Q Right, but so why would it not be done -- if
6 you've got a probation hold that the allegation
7 is drug use, is there a reason why you wouldn't
8 screen or the medical staff wouldn't screen for
9 that?

10 A I think the probation agent would provide --
11 come in and get that.

12 Q Okay. But the probation agent is not coming in
13 within minutes of the person being brought in,
14 fair?

15 A Fair.

16 Q I mean, it could be 12 hours; it could be 48
17 hours before the agent gets around to popping
18 over to the jail, right?

19 A Correct.

20 Q And by that time, drug usage would dissipate or
21 show up as zero, right?

22 MR. REGINATO: Object, speculation
23 and lack of foundation.

24 MR. CADE: You can answer.

25 THE WITNESS: Presumably.

1 BY MR. CADE:

2 Q Okay. So do you know why the test is not done,
3 at least collected?

4 A I don't.

5 Q Well, you are now the jail administrator, so
6 that would presumably be in your bailiwick to
7 make that determination, right?

8 MR. REGINATO: I'm going to object,
9 mischaracterizes the evidence. Calls for
10 speculation, lacks foundation. Go ahead.

11 BY MR. CADE:

12 Q Let me rephrase. As the jail administrator for
13 the -- specifically for the captain of security
14 services, is it fair to say that for the
15 jail -- let me back up. Your supervisor is the
16 sheriff of Dane County, correct?

17 A Correct.

18 Q Okay. There is no one else that's above you in
19 terms of supervision, fair?

20 A Fair.

21 Q Okay. So if there is a policy for the jail,
22 other than the sheriff signing off on it, the
23 determination as to whether a policy needs to
24 either be implemented, revised, or rescinded
25 would go through you, correct?

1 MR. REGINATO: I'm going to object to
2 lack of foundation.

3 THE WITNESS: Yes. I sign off on --
4 I'm the final approver or denier of policies
5 and updated policies.

6 BY MR. CADE:

7 Q Okay. So is there a rationale as the jail
8 administrator as to why, when people are
9 brought into the jail, that they are not given
10 a tox screen or some other test to determine if
11 they have drugs or other narcotics, et cetera,
12 in their system?

13 MR. REGINATO: Object to foundation.

14 THE WITNESS: I believe probably the
15 rationale behind that is to respect the privacy
16 of people, particularly those that are
17 unsentenced.

18 BY MR. CADE:

19 Q Okay. But someone who is on a probation hold
20 has been sentenced, correct?

21 A They have been sentenced to the department of
22 correction. We do not treat straight holds --
23 we treat those as unsentenced detainees.

24 Q Is there a policy or some sort of guiding
25 principle as to why you would treat that type

1 of individual as an unsentenced detainee?

2 MR. REGINATO: Object, foundation.

3 THE WITNESS: There is, and I'm not
4 well versed on what that is, but I believe it's
5 founded in case law.

6 BY MR. CADE:

7 Q Okay. Is the booking area -- is there video
8 equipment or taping in the booking area?

9 A There is.

10 Q And are those videos maintained?

11 A Yes.

12 Q Can we turn for a moment -- Captain, would you
13 agree with me that contraband in the jail
14 environment generally is a bad thing?

15 A Yes.

16 Q And, obviously, weapons as contraband is bad
17 because, not only could an inmate get injured,
18 fights, stabbing, whatever, but one of the
19 deputies or staff could get injured as well,
20 fair?

21 A Yes.

22 Q Would you agree that drugs in the jail
23 environment are bad as well?

24 A Yes.

25 Q And I'm presuming -- I'm sure it has happened,

1 but I'm presuming that it's not as if the
2 deputies or staff are getting high from drugs
3 in that environment, fair?

4 A Fair.

5 Q Okay. So why is it bad in the jail context for
6 there to be drug contraband?

7 A well, we -- our primary responsibility in the
8 jail and for our staff is for the well-being of
9 the inmates that are remanded to our custody,
10 and we certainly do not want any harm or
11 anything, overdoses or behavioral issues as a
12 result of drugs in the facility; so there is
13 any number of reasons why we wouldn't want
14 drugs in our facility, the least of which being
15 that they are also illegal to be in our
16 facility; so --

17 Q Sure. well, and so -- and that's kind of my --
18 where I'm going back is, I know -- I apologize
19 if it seems as if I'm being redundant, but
20 if -- you would agree that the jail has a
21 responsibility to the inmates to protect them
22 to the best of the abilities of the sheriff's
23 department, true?

24 A True.

25 MR. REGINATO: Object to foundation.

1 BY MR. CADE:

2 Q I'm sorry. I didn't hear the answer.

3 A True.

4 Q And so that's everything from making sure they
5 get their medication -- you know, so if someone
6 is a diabetic, the jail is responsible to make
7 sure they are getting their shots or insulin in
8 whatever fashion or form, right?

9 A Yes.

10 Q And if drugs are coming into the jail, that
11 could result in harm or, in this case, death to
12 a prisoner, true?

13 A If they get in the facility, true, yes.

14 Q Okay. I mean, I was reading some materials. I
15 don't have it up in front of me, but I was
16 reading some materials that I think even having
17 Tylenol could be considered contraband unless
18 it was specifically approved, right?

19 A Yes. If it wasn't provided to them, yes, it's
20 contraband.

21 Q Right, and, I mean -- and I'm assuming they
22 have some sort of canteen or commissary where
23 they can purchase Tylenol if they have a
24 headache or if they ask -- one way or the other
25 they can get Tylenol directly from the jail,

1 either by purchasing it or being supplied by
2 someone on staff, but bringing in Tylenol or
3 possessing it without specific authority or
4 purchase, that's contraband, right?

5 A Yes.

6 Q So the same holds true for drugs if -- if the
7 jail is trying to protect inmates from drug
8 usage and consumption in the jail, can you
9 explain to me the rationale why, prior to the
10 scanners, at a minimum, there wasn't even a
11 basic strip search done of every new arrestee?

12 A Yes. So our policy is really a balancing act,
13 and we are trying to, with respect to the
14 policy and with the rights and the privacy and
15 the dignity of the person being searched,
16 balancing that with the safety and security of
17 the jail. You are completely correct that we
18 want to and need to and have a responsibility
19 to minimize as much as possible contraband
20 coming into the jail, but we also have to
21 balance that with the rights and the privacy
22 and the dignity of the person that we are going
23 to be searching.

24 Q Well, if drugs get into the jail, especially
25 whether it's opioids or, you know, fentanyl,

1 things of that nature, there is a very strong
2 likelihood of serious harm or death to an
3 inmate, correct?

4 MR. REGINATO: Object to foundation,
5 calls for speculation.

6 THE WITNESS: Those -- the opiates
7 you mentioned certainly can be deadly, yes.

8 BY MR. CADE:

9 Q And in order to do a strip search, as you said,
10 it's basically five minutes to do that search,
11 correct?

12 A Correct. It's not -- definitely not a time
13 issue.

14 Q Okay. When strip searches are done, is it just
15 one deputy or booking officer who is doing it,
16 or are there two, one to be a witness,
17 observer-type person?

18 A Typically, it would just be one. It would be
19 in an area that obviously doesn't have video
20 reproduction capabilities and not in view from
21 others, so it would be in a private area, and
22 most times, unless there is some type of
23 behavioral -- some type of behavioral concern,
24 it would just be one deputy. If there was a
25 safety issue for some reason, there might be a

1 second.

2 Q Sure, okay. That's fair.

3 A There might be a second if there is safety
4 concerns. You know, unusually aggressive
5 behavior on the part of the subject, we might
6 have a second deputy there, but it would
7 also -- both would be same-sex searches.

8 Q I'm going to show you in one second -- I'm
9 going to do what we call a share screen,
10 Captain.

11 A Okay.

12 Q One downside of Zoom depositions, it's not as
13 smooth as you would like. I'm going to show
14 you -- can you see the screen that I have in
15 front of you?

16 A Yes.

17 Q Okay. So this was presented to me as, I guess,
18 by the sheriff's office as a manual dealing
19 with the Dane County Jail. Do you see that it
20 appears to be a date of January 21, 2016?

21 A Yes.

22 Q And if you need anything blown up, just let me
23 know. So this is -- I have marked it
24 Exhibit 1. I even put a nice little sticker on
25 there. Below the Exhibit 1 sticker, you'll see

1 some -- it's in red, and the first page of the
2 document says County Doc, D-O-C, 158; do you
3 see that?

4 A Yes.

5 Q And if I go to the next page, it's now County
6 Doc 159?

7 A Yes.

8 Q So that is what we call a Bates, B-A-T-E-S,
9 number. And all that is is it's a simple,
10 like, a control device so, you know, if I'm
11 telling you to look at a specific page and it's
12 unclear and we want to make sure we all have
13 the same version, folks tend to put the lawyers
14 or their staff put these on the documents when
15 they are produced so we can track and make sure
16 that we are using the exact same document every
17 time; does that make sense?

18 A It does.

19 Q So what I would like to do is jump to 170. So
20 this is entitled -- or this section -- I'm
21 looking at Section 6, "Searches during
22 admissions," and it says, "All persons admitted
23 to the Dane County Jail will be searched during
24 the admissions process. Searches of prisoners
25 during admissions are conducted to detect

1 weapons, drugs, or other contraband and ensure
2 a safe jail environment for prisoners and
3 staff. B, the booking deputy will conduct a
4 full search of each person admitted to the jail
5 in the booking area of the public safety
6 building jail. If required, the booking deputy
7 or designated deputy will conduct a strip
8 search of newly admitted persons in accordance
9 with the policy on searches of prisoners. The
10 deputy conducting the search will document the
11 results in accordance with the policy on
12 searches of prisoners"; do you see that?

13 A I do, yes.

14 Q And is the policy on searches of prisoners, is
15 that within this manual, or is that a second or
16 different manual?

17 A It's within that manual.

18 Q Okay. I just want to make sure, so where it
19 says Section 6B, if required will conduct a
20 strip search. What would be the requirement to
21 conduct a strip search?

22 A I don't know why the term "required" is there
23 being that the strip search, even of sentenced
24 inmates, is something we do frequently. But I
25 don't think I would characterize that as

1 required.

2 Q okay.

3 A It may be required if a supervisor directs you
4 to do the strip search, but I don't know why
5 the term required is in that portion of the
6 policy manual.

7 Q well, and that's why I wanted to follow up on
8 this because you told me earlier that whatever
9 deputy -- and just so we are clear, the people
10 who are in the booking area are deputies,
11 correct, it's not -- you don't have a non-Dane
12 County Jail staff working the booking area; you
13 don't have an outside civilian, for example?

14 A Nope. Those are deputies that work in the
15 booking area.

16 Q So you had mentioned earlier that the deputy
17 has discretion in terms of doing a strip
18 search?

19 A Yes.

20 Q So that's why I'm wondering why the language
21 "if required" and what would constitute a
22 requirement?

23 A I can't think of a required time with the
24 exception of if a supervisor directs that
25 deputy to conduct a strip search, then it may

1 be required, but I can't think of a time in and
2 of itself the strip search would be required of
3 them.

4 Q And if a supervisor tells a deputy, "Do a strip
5 search," it's not as if the deputy can say,
6 "I'm not doing the strip search"; that's a
7 command direction they have to respond to and
8 follow?

9 A That is correct, unless it's illegal.

10 Q So I've turned now to 183, which is entitled,
11 "Full Search of Individuals." And it says
12 specifically that a full search is not a strip
13 search, correct?

14 A A full search is not a strip search, correct.

15 Q One of the policies -- it says, "Inmates will
16 be searched under the following circumstances,"
17 and one of the them is returning from the
18 attorney's booth. Can you explain to me the
19 rationale as to why, after returning from
20 meeting -- the only time you are in the
21 attorney's booth is to meet with an attorney,
22 correct?

23 A Yes.

24 Q And you are not doing visitation in the
25 attorney's booth, right?

1 A Correct.

2 Q So is there a rationale as to why a strip
3 search occurs after -- or not a strip search, a
4 full search, a search, occurs after the inmate
5 has met with their attorney?

6 A Yes. So in the attorney booth, at least -- and
7 I can't speak for other facilities, but in our
8 attorney booth, there is a pass-through for
9 exchanging documents, and if anything was to be
10 passed through that pass-through from an
11 attorney to the detainee, then -- we wouldn't
12 examine any documents, but during that search,
13 we would search for contraband.

14 Q So when you were the OIC, was there a greater
15 concern with someone coming into the jail after
16 being arrested bringing in contraband or a
17 greater concern that an attorney would turn
18 around and provide contraband?

19 A I would -- from my perspective, the greater
20 risk for introduction of contraband is from the
21 inmate coming in the facility.

22 Q Okay. You would agree with me that if
23 contraband is found after meeting with an
24 attorney, an investigation is done, right?

25 A It would be, yes.

1 Q Are you aware of contraband having been found
2 after an inmate met with an attorney during
3 your time period either as OIC or as jail
4 administrator?

5 A Not that I'm aware of, no.

6 Q Because if an attorney supplies contraband to
7 an inmate, they could be charged criminally,
8 true?

9 MR. REGINATO: Objection, lacks
10 foundation.

11 THE WITNESS: I would -- knowingly,
12 yes, there would be a potential for a charge,
13 yes.

14 BY MR. CADE:

15 Q And then if I turn to 185, this is a policy on
16 strip search, correct?

17 A It is -- your policy seems to be different than
18 what I have in front of me as they existed in
19 2016. I believe there is probably something
20 much more updated than 1992.

21 Q Okay. I didn't mix and match, so this was --
22 the Bates number on there was what was given to
23 me; so --

24 A Yeah, I have -- so I'm looking at our policy
25 manual from the time of 2016, and I believe I

1 have a searches of inmates policy, which is
2 603.04, and then it includes strip searches as
3 a section of that policy. I don't know that
4 there is differences in the verbiage in it or
5 not.

6 Q Okay. So 603.04?

7 A Yes.

8 Q Okay. I don't have .04.

9 A And it's -- that policy was instituted on 1/21
10 of 2016.

11 Q Okay. So that would seem to be, if I go back
12 to the beginning, 1/21 of '16 when this was all
13 done, correct?

14 A Correct. That's your table of contents, but I
15 don't know that it's consistent in -- so if you
16 look down on -- under "security operations" in
17 section 603.

18 Q Uh-huh.

19 A Section 603.04 is searches of inmates.

20 Q Right.

21 A That contains the information on strip searches
22 within that policy. Prior to that, there may
23 have been a separate policy for strip searches.
24 I'm not familiar with that policy.

25 Q And that's where -- that was going to be my

1 next question because if I go back to the
2 beginning of Exhibit 1, and, again, we see here
3 that January 21st of '16, correct?

4 A Yes.

5 Q So when I go back the table of contents, the
6 first document I have is 601.01, and it says
7 that that's 5/22/08; is that the same for
8 yours?

9 A Yes.

10 Q So if I scroll, I go from 601.01 to 603.05.
11 Now -- and that's 9/1 of '98. If I go back to
12 the first page, there is no 603.5. It's
13 603.05; do you see that?

14 A Yes.

15 Q Now, I presume that part of this is I didn't
16 get -- your manual, how thick is it? How many
17 pages is your manual?

18 A It's probably four inches thick. It doesn't
19 have a numbering system from one through the
20 end because there is separate page numbers for
21 each policy itself.

22 Q Sure.

23 A But it's thick.

24 Q What I presume is that I was given, most
25 likely, a redacted or -- not a redacted -- a

1 reduced version that only provided certain
2 pages, which is fine, but clearly if I go from
3 601.01 to 603.05, I'm clearly missing the prior
4 page about searches of inmates, correct?

5 MR. REGINATO: I'm going to object to
6 mischaracterizes what's -- what we produced
7 during our response in discovery. Nate, if you
8 recall, we provided you certain policies. We
9 then discussed our response to your document
10 request, and we came to an agreement that we
11 would just provide you with the entire policy
12 manual. We followed up by providing you with
13 the entire policy manual shortly thereafter,
14 which can be found in Bates-labeled County DOC
15 365 all the way to County DOC -- it starts on
16 365, ends on 721, so you are still looking at
17 the initial document production prior to us
18 conferring and agreeing to just provide you
19 with the whole manual.

20 MR. CADE: Matteo, can you -- I don't
21 have that, and there could be lots of reasons
22 why I don't have it. Again, I'm not
23 insinuating anything. Is that something you
24 can send to me right now?

25 MR. REGINATO: Yeah, sure. I think

1 it should be uploaded. Let me see if I sent
2 you a link because it's a long -- we produced
3 an additional 860 documents after we spoke, but
4 let me see if I have the e-mail. One second.

5 (Discussion off the record.)

6 (Recess taken.)

7 BY MR. CADE:

8 Q I'm going to show you -- I was showing you
9 previously Exhibit 1. I'm going to switch
10 over, and for this portion I'm going to show
11 you Exhibit 8. Can you see that, sir?

12 A Yes.

13 Q Okay. So these are documents that counsel has
14 provided previously starting with Bates stamp
15 DOC 436, and this is 1/21 of '16, searches of
16 inmates, correct?

17 A Yes.

18 Q And here they talk about an updated jail
19 curriculum as of June of 2015, and now we have
20 got different definitions or terms: First
21 pat-down search, full or custodial search,
22 strip search, body cavity search, exigent
23 circumstances, and physically disabled person,
24 correct?

25 A Correct.

1 Q So in looking at Exhibit 8, it goes through the
2 procedures for each one, and if I go to
3 Section 3, "strip search and body cavity
4 searches," and that's on Bates County DOC 438,
5 "No person may be the subject of a strip search
6 unless she is a detained inmate ascribed in
7 Section 4 below." When I go to section 4
8 below, it identifies a list of -- a list of
9 criteria for someone to be considered a -- for
10 someone to be considered for strip search,
11 correct?

12 A Yes.

13 Q Okay. So I want to go over this. One second.
14 So there is a list of things in Section 4B.
15 For the purpose of this section -- or, I'm
16 sorry. "You can only do a strip search when
17 you have written permission from the supervisor
18 and when the person is a detainee"; correct?

19 A Yes.

20 Q And we have got five categories for the
21 purposes -- under Section B, "For the purpose
22 of this section, an inmate is considered a
23 detainee under any of the following
24 circumstances." And I want to go to Section 5.
25 Your policy -- and I believe -- correct me if

1 I'm wrong, Captain, if you know -- it appears
2 that in accordance with Section 968.255; do you
3 see that?

4 A Yeah.

5 Q And Section 5, so 4B5, "The detainee was
6 arrested or otherwise lawfully detained or
7 taken into custody resulting in incarceration
8 in the Dane County Jail for not less than 12
9 hours with one or more other inmates." So I
10 read that -- and correct me if I'm wrong -- if
11 that person is going to be held as a detainee
12 in the jail for more than 12 hours and around
13 other prisoners, they could be strip searched,
14 correct?

15 A Yes, they could be strip searched, yes.

16 Q Okay. Because I will -- your language is
17 slightly different than the statute, so I'm
18 going to throw the statute up there, and that's
19 it right here. The statute just says -- it
20 says nothing about 12 hours; it just says,
21 "detained or taken into custody if they are
22 incarcerated, imprisoned or otherwise detained
23 in a jail or prison with one or more other
24 persons"; do you see that?

25 A Yes.

1 Q Okay. And so there is no doubt that when
2 someone comes in after being arrested, we have
3 different categories of that person. I
4 jokingly said when I asked at the beginning
5 about people being arrested, I would assume you
6 get a lot during the Badger game; people get
7 drunk and they do stupid things?

8 A Yes.

9 Q Okay. And usually if someone is held for
10 public intoxication, doing something stupid
11 while drunken, the idea is not to hold them for
12 more than 12 hours, fair?

13 A Yeah, fair. That would be our hope.

14 Q Yeah. So your policy is different than the
15 statute because you are saying, hey, we are
16 going to hold them -- if we hold them more than
17 12 hours, we have the ability to call them a
18 "detainee," air quotes, and do a strip search,
19 correct?

20 A We are permitted to do that, yes.

21 Q So showing you again Exhibit 8, and, I
22 apologize, I was looking -- I did not see -- if
23 there is a specific page; if you tell me to
24 turn to it, I will, but I don't see anything
25 here, Captain, that talks about discretion. We

1 had talked about earlier the booking person has
2 discretion about doing a search. It clearly
3 indicates on page 437, the second page of the
4 policy, "full custodial searches shall be
5 conducted on all new arrests"?

6 A Yes.

7 Q I don't see anything here about strip searches
8 and the criteria for doing a strip search.

9 A Yeah. Other than it indicates that may be
10 performed with written permission from a
11 supervisor and when inmate is a detainee.

12 Q Right, so if they are a detainee -- if I came
13 in on a probation hold, there is a very strong
14 likelihood I'm going to be there for more than
15 12 hours, right?

16 A Uh-huh.

17 Q Is that a "yes"?

18 A Yes, yes.

19 Q You are doing great, so don't worry. That was
20 your first one.

21 So where is it in the policy that
22 tells the booking deputy, here's how you make
23 the determination as to whether you should or
24 should not do a strip search, putting aside the
25 legal side of it, you know, we can only do it

1 in these instances? Where do you get it for --
2 you know, how does your booking deputy know,
3 hey, this person looks shady. I think there
4 might be something. Is there a training
5 manual? Are they told? Are they, you know,
6 given examples?

7 MR. REGINATO: I'm just going to
8 object on the basis that the question has been
9 asked and answered, and he testified earlier
10 about the discretionary powers that the
11 deputies have based on what they observe and
12 they know.

13 THE WITNESS: In the very first part
14 of that policy, 603.04, searches of inmates,
15 under the second paragraph, it's not specific
16 about, you know, circumstances of the arrest,
17 but it does give a general indication that
18 "deputies must balance the legitimate interest
19 of safety, security, and management against the
20 intrusiveness of the intended search to ensure
21 that the search is reasonable and therefore
22 constitutional. Deputies must also ensure that
23 for more intrusive searches there is adequate
24 justification to support the degree of
25 intrusion to be employed."

1 BY MR. CADE:

2 Q Can you show me where you are reading from?

3 A Yeah. I was reading from under the -- in
4 603.04, the subject line is "searches of
5 inmates," and under the policy, there is two
6 short paragraphs under policy before it gets
7 into the definitions.

8 Q Okay.

9 A And you are right in that it does not give
10 specific circumstances indicating that if there
11 was drugs not found on the -- on the arrest
12 circumstances; it doesn't get specific into
13 that, but it's a little bit more general in
14 talking about balancing that safety and
15 security with the intrusiveness of the search
16 to be performed. But we do have -- one of the
17 things that the department of corrections
18 requires of us is that we have annual training
19 with the topic of searches, and those vary from
20 year to year to satisfy our requirements from
21 DOC to train on searches annually, so sometimes
22 it's about those type of specific things;
23 sometimes it's about specifically how you might
24 do that search procedurally, or other times it
25 might be talking about when is a good time to

1 use your discretion and under what
2 circumstances, so there is -- we do train
3 annually on a variety of different topics
4 related to searches, and I don't know
5 specifically -- I'm not able to tell you
6 specifically when we may have trained on
7 circumstances of when is a good time to do a
8 strip search because the topic is broadly
9 "searches with inmates."

10 Q Now, in that paragraph you read, the second
11 paragraph under the policy, "the deputy must
12 balance the legitimate interest of safety,
13 security, and management." What does it mean
14 by management?

15 A In that context, I believe management is
16 referring to the management of inmates and the
17 ability of our deputies to manage a housing
18 unit and the management of inmates.

19 Q So would that be fair to say that if someone is
20 coming into the facility that if you've got one
21 person just coming in and no other inmates are
22 waiting, that's a different management issue as
23 compared to if you've got ten people in the
24 booking area you've got to get through there?

25 A That may apply to management as well.

1 Q I would imagine that if you've got ten people
2 in the booking area, the goal is to get them
3 booked as fast as possible so they are not all
4 sitting around, fair?

5 MR. REGINATO: Object to foundation.

6 THE WITNESS: That is the goal, but
7 as administration, we would certainly not
8 support the concept of time management over
9 safety and security.

10 BY MR. CADE:

11 Q Sure. I understand that aspect, but if there
12 is ten people waiting in the booking area, the
13 booking deputies need to get those people
14 processed as soon as possible and get them out
15 of the booking area, correct?

16 MR. REGINATO: Object to foundation,
17 calls for speculation and is providing an
18 incomplete hypothetical.

19 THE WITNESS: Correct, but not at the
20 expense of safety and security.

21 BY MR. CADE:

22 Q First shift, second shift, are those the
23 typical shifts, or what are the time periods?

24 A Our first shift is 7:00 a.m. to 3:00 p.m.,
25 second shift is 3:00 p.m. to 11:00 p.m., and

1 third shift is 11:00 p.m. to 7:00 a.m.

2 Q Okay. I want to switch over to -- show you
3 Exhibit 2, and I apologize, I'll blow this up.
4 This was provided to me -- how do I tell who
5 the booking person is on a given day? Is there
6 something that says booking?

7 A Do you mean from -- are you looking at like a
8 roster or a daily schedule or something?

9 Q Yeah, correct.

10 A Yes, the booking deputy is indicated as booking
11 deputy or D3.

12 Q Okay. So would that be under field services,
13 security services?

14 A It would be under security services.

15 Q Okay.

16 A And I'm not seeing what you are seeing so, but
17 I believe --

18 Q I'm sorry. I thought I had shared the screen.
19 My apologies.

20 A No problem. So under security services.

21 Q Hold on. Let me switch this. There we go.
22 Let's try that again. Do you need me to blow
23 it up any more?

24 A If you can get it just slightly bigger. Okay.
25 Now if you scroll down just a little bit.

1 Central booking, you would see Shaun
2 Christians (phonetic). He would have been the
3 booking deputy that day.

4 Q Is there only one booking deputy?

5 A No. Also -- there is only one booking deputy,
6 and actually our booking deputy is a promoted
7 position, so typically deputies that are
8 working in the jail are deputies ones or twos,
9 and a deputy three has been promoted to a
10 booking deputy. In addition to the booking
11 deputy, where you see that MT1 down there,
12 that's our movement team one. Those are also
13 working in the booking area with -- but the
14 booking deputy is actually a lead worker,
15 doesn't have full supervisory responsibilities
16 over those deputies, but he's in charge of the
17 area and is a lead worker in that area.

18 Q Okay. So if I wanted to find out who worked on
19 a particular day, I would need this roster,
20 correct?

21 A Yes.

22 Q Okay.

23 MR. CADE: Matteo, can I get the
24 roster that was provided -- let me scroll down.
25 It starts on December 22nd, and then it goes

1 December 23rd, and then it skips to December
2 29th.

3 MR. REGINATO: Yeah, I see that.

4 MR. CADE: 30th, and then 31st. I
5 don't have for the 26th of December. That's
6 the date I'm looking for.

7 MR. REGINATO: Okay.

8 MR. CADE: And I just went through
9 quickly what you had -- that Dropbox, and they
10 are not in there.

11 MR. REGINATO: Yeah, I don't know why
12 it wouldn't --

13 MR. CADE: So you can see it skips,
14 so the 24th through the 28th were never
15 provided.

16 BY MR. CADE:

17 Q Okay, Captain, I'm going to switch --

18 MR. CADE: Can I switch, Matteo? Are
19 you good?

20 MR. REGINATO: Yeah, I'm good. I'm
21 trying to see what that's --

22 BY MR. CADE:

23 Q I'm going to show you Exhibit 3, Captain, and
24 this is for a particular inmate by the name of
25 Paul Tarkenton.

- 1 A Okay.
- 2 Q And it's a three-page document. Does this tell
3 me who the booking person is?
- 4 A It does not. It tells us the booking clerk, so
5 the civilian clerk that did the data entry on
6 it.
- 7 Q Okay.
- 8 A But it does not tell us the booking deputy.
9 Give me just a second to go through it to make
10 sure I'm saying that correctly.
- 11 Q We will go to the first page, and when you tell
12 me to move, I'll move.
- 13 A Okay. Okay, next page. You know what, I think
14 towards the bottom of that where it says
15 "officer," and it says, "Luke Deibele," that
16 very well may be the booking deputy that was in
17 charge during that particular booking.
- 18 Q Okay.
- 19 A I'm not sure, but I believe that to be true.
- 20 Q Deibele spelled D-E-I-B-E-L-E.
- 21 A And that's pronounced Deibele.
- 22 Q Okay. And if I go to the next page, nothing
23 really there, correct?
- 24 A Correct.
- 25 Q And so the only officer that is identified is

1 Officer Deibele, correct?

2 A Correct.

3 Q So it doesn't -- so is Officer Deibele, would
4 he be a booking officer, or would he be that
5 CMT3 or whatever, the control management team?

6 A Nope. He would be -- he would be the booking
7 deputy, I believe --

8 Q Okay.

9 A -- that took that person into custody from the
10 arresting agency.

11 Q And that would be the individual who makes the
12 determination as to whether or not a strip
13 search is at least sought or asked for,
14 correct?

15 A Correct.

16 Q Now, there is also here some alert codes; do
17 you see that?

18 A I do.

19 Q And it says "drug abuse history"?

20 A Yes.

21 Q Does drug abuse history indicate grounds for a
22 strip search under that discretionary model
23 that you indicated?

24 MR. REGINATO: I'm going to object,
25 incomplete hypothetical. Calls for

1 speculation.

2 THE WITNESS: It may not necessarily
3 trigger that in and of itself.

4 BY MR. CADE:

5 Q would they do a -- I'm sorry, is the booking
6 officer trained to, for example, look at --
7 when a person comes in, check their pupils, see
8 if they are dilated, see if there is any issues
9 with them medically or at least physical
10 appearance that would suggest they are either
11 high or on some other drugs?

12 A Yes, training and experience.

13 Q Okay. Exhibit 4, this one is not Bates
14 numbered, previously provided. I just wanted
15 to be clear, so this is part of the
16 investigation into the death -- I can blow this
17 up a little bit -- into the death of Mr. Payne.
18 And it indicates -- we are still dealing with
19 Paul Tarkenton -- and it says, "The strip
20 search that was conducted revealed that he had
21 contraband, tested positive for heroin"; do you
22 see that?

23 A Yes.

24 Q Okay. And he was searched at 12/27, 2:45 p.m.,
25 which was the day after he came in, and I'll go

1 back to 3, just so you have that. 3 he was
2 brought in at -- at least his property was
3 inventoried at 5:02 p.m., correct?

4 MR. REGINATO: I'm just going to
5 object on the basis of foundation. Are you
6 asking the witness whether the report states
7 what you are saying or whether this actually
8 occurred?

9 MR. CADE: No. I'm saying I
10 presume -- I asked him the property was
11 inventoried, because it says taken at 5:02 p.m.
12 on 12/26, so he's just verifying that their
13 records are correct and accurate, and that
14 would be roughly the time they would have taken
15 Mr. Tarkenton's property on December 26th.

16 MR. REGINATO: Okay, well, lacks
17 foundation.

18 BY MR. CADE:

19 Q Captain, are the records of the jail, would you
20 presume them to be true and accurate?

21 A I would.

22 Q Okay. So if it says "property taken at 17:02,"
23 or 5:02 p.m. on December 26th; do you expect
24 that to be accurate?

25 A Yes.

1 Q Okay. And if it says the property's taken at
2 12:02 -- I'm sorry, at 5:02, that presumes that
3 Mr. Tarkenton had been brought in sometime
4 prior to that, correct?

5 A I would think so, and I don't know how that
6 time and date stamp auto-populates, whether
7 that's the -- when we change them over or
8 whether that's when our civilians log those
9 items into the property bag, so I don't know --
10 I apologize, but I don't know exactly when
11 that -- it does appear that it's an
12 auto-populated time stamp being that there are
13 seconds on it, so I don't know exactly when
14 that gets auto-generated.

15 Q Right. I'm just saying it's fair to say that
16 at 5:02 p.m., the minute that -- you know, it's
17 not as much if Tarkenton showed up at 5:02 and
18 the inventory takes place. Other things would
19 have occurred prior to the inventory being
20 reported?

21 A Yes.

22 Q So the presumption is if the inventory was
23 reported at 5:02, he would have been booked and
24 brought into the jail at some point prior to
25 5:02, fair?

1 A I believe that would probably be accurate, yes.

2 Q Okay. And so if I go to earlier, this appears
3 to be some -- there is some prior bookings; do
4 you see that? There is property taken on July
5 7th of '17?

6 A Yes.

7 Q And then there is also July 20th of '17
8 property taken in, correct?

9 A Correct.

10 Q Okay. We know that this booking number --
11 nope, I don't see it, so there is no booking
12 number here. I'm sorry, here's Booking
13 No. 506433; do you see that?

14 A Yes.

15 Q So 506433, the same thing, it gives the -- he
16 was sentenced in June of '17, Judge Kowski,
17 K-A-W-S-K-I, gave him a sentence on June 28th,
18 and then it indicates 506433 that he's on
19 probation hold and in state out-of-county hold,
20 correct?

21 A Yes.

22 Q And then according to -- well, I'm sorry.
23 There is an arrest number, and it appears that
24 he's arrested at 3:00 on December 27th,
25 correct?

1 A Yes.

2 Q And that's for controlled substances?

3 A That looks accurate, yes.

4 Q So that it may not be Deputy Deibele who was
5 the booking deputy on the 26th, Deibele may be
6 the booking deputy on the 27th when he's
7 arrested for the possession of the narcotics,
8 fair?

9 MR. REGINATO: Objection, lacks
10 foundation.

11 THE WITNESS: I believe you are
12 reading that correctly, yes.

13 BY MR. CADE:

14 Q Okay. So going back to Exhibit 4, they finally
15 do a strip search the next day of Tarkenton,
16 and they find heroin. And this report,
17 Exhibit 4, is prepared by Luke Deibele,
18 correct?

19 A Yes.

20 Q And you would expect Deputy Deibele to be
21 truthful and accurate in terms what he writes
22 down, correct?

23 A I would expect, yes.

24 Q Exhibit 5, this is a report prepared by Deputy
25 Matthew Earll, E-A-R-L-L; do you see that?

1 A Yes.

2 Q And Deputy Earll -- hold on one second. Deputy
3 Earll says that he did a -- talks about his
4 shift -- if you need me to blow it up, let me
5 know -- but then when we go down to incident
6 information at 2:10 p.m. on December 27th, he
7 was working public safety building, went down
8 to Pod C, and then on Pod C he saw an inmate --
9 hold on one second. I'm sorry, down here,
10 movement of inmate, he and Deputy Vick
11 (phonetic) went to Bunk 13, which is Tarkenton,
12 and they observed him making jerking movements
13 with his arm and head; do you see that?

14 A I do.

15 Q And he said, "This was not normal behavior.
16 Once he was standing up, I escorted him, and
17 then I asked him what he was on," and he said
18 he took heroin earlier in the day, and then he
19 said, "I took it before I came in yesterday";
20 do you see that?

21 A Yes.

22 Q And then he says he did a pat-down, and he did
23 not locate anything.

24 A Yes.

25 Q So at approximately 2:10 -- let me make sure

1 that I got the time right -- yeah, at 2:10 on
2 December 27th, they have already located pain;
3 do you see that?

4 A What was the -- the last one was 2:10, right?

5 Q Right. 2:10 he arrives on scene. They have
6 already located Payne who has collapsed; do you
7 see that?

8 A Yes.

9 Q And they do a pat-down search, officer --
10 Deputy Earl, and he doesn't locate any drugs,
11 right?

12 MR. REGINATO: I'm just going to
13 object to lack of foundation. He wasn't
14 involved in the investigation, and he didn't
15 write this report, so the only information that
16 he could have is the ability to read that
17 report and tell you what it says, so just a
18 standing objection on the basis that he lacks
19 foundation to testify about the events.

20 MR. CADE: Sure. But he was also put
21 forward as someone who is knowledgeable; so --

22 MR. REGINATO: Well, hold on a
23 second. I'm going to object to that. You
24 asked for someone who is knowledgeable about
25 the policies and practices of the Dane County

1 Jail, not somebody who was knowledgeable about
2 the investigation or about the events; let's
3 clarify.

4 BY MR. CADE:

5 Q Again, Captain, you would expect these reports
6 to be truthful and accurate, correct?

7 A That would be my expectation, yes.

8 Q And if you are presented with a report, you
9 would not turn around and believe that whoever
10 drafted the report would have lied or
11 misrepresented the facts as they observed,
12 fair?

13 A That is fair.

14 Q So according to Deputy Earl, he arrived at
15 2:10, Shannon Payne is already down, he does a
16 pat-down of Tarkenton, and he finds no drugs,
17 fair?

18 A Fair.

19 Q Then if I go to 6, strip search -- hold on.
20 This is by Deputy Reiser, R-E-I-S-E-R, dated
21 12/27 of '16?

22 A Okay.

23 Q And it says he's doing a strip search at 2:50
24 p.m. Is there a reason, Captain, that if one
25 deputy has done a pat-down and they have

1 located no narcotics, is there a reason why
2 another deputy would then do a strip search
3 five minutes later -- or, I'm sorry, 40 minutes
4 later?

5 MR. REGINATO: Object to foundation,
6 calls for speculation. You can answer, if you
7 know.

8 THE WITNESS: The reason they would
9 be doing a strip search, and not to speak
10 directly about the 40 minutes later, but the
11 reason they would be doing a strip search is
12 it's a much more thorough search than the
13 pat-down.

14 BY MR. CADE:

15 Q Okay. But if the pat-down is what folks are
16 generally getting when they come into the jail
17 and a pat-down is done of Tarkenton and no
18 drugs are found, what would be the rationale
19 for doing a strip search of Tarkenton after the
20 pat-down?

21 MR. REGINATO: Same objection. Asked
22 and answered.

23 THE WITNESS: You know, I scanned
24 through some of these reports, but I believe
25 that there was indicators in Deputy Earl's

1 report that said he saw behavior consistent
2 with being what his professional experience
3 might be with witnessing somebody who was on
4 drugs or high, and the fact that he -- did he
5 tell him that he had taken heroin? Is that
6 the --

7 BY MR. CADE:

8 Q He said he had taken it earlier, like -- that's
9 what I'm trying to figure out. Deputy Earll,
10 he's told, "Hey, I did drugs," and then he did
11 a pat-down, and he didn't find anything. Is
12 there a reason why Deputy Earll didn't use his
13 discretion and automatically go into strip
14 search mode?

15 MR. REGINATO: I'm going to object to
16 speculation. I'm going to object to lack of
17 foundation. If you know Deputy Earll and why
18 he made certain decisions, you can answer;
19 otherwise, go ahead.

20 THE WITNESS: I believe he was
21 probably taken to an area that was not in view
22 of others. I would think that it was then a
23 supervisor said, hey, did we get a strip
24 search? I don't know this. I am actually
25 completely speculating, but there would not

1 have been an immediate strip search in that pod
2 in front of other inmates. They would have to
3 be transported to another more private area.
4 I'm not suggesting that would take 40 minutes
5 to do, but he was probably observed, moved down
6 to an area that was more private, and then
7 was -- somebody was directed to do a strip
8 search based on the behavior that Deputy Earl
9 observed.

10 BY MR. CADE:

11 Q Okay. And if a strip search takes place -- so
12 I want you to -- you know, according to this,
13 at 2:50 p.m. someone else was called out, and a
14 strip search was done, not Tarkenton, and it
15 says no contraband found, and then on page 2 of
16 Exhibit 6, there is a strip search of someone
17 else at 3:05 p.m., no contraband found. And I
18 thought it was on this one, and I apologize,
19 but it -- in this, someone is interviewed,
20 Crawford, and it says that he was talking to
21 Hasad (Phonetic) at the time -- he indicates
22 that he had just arrived in the pod, and he was
23 suffering from withdrawals; do you see that?

24 A Yes.

25 Q And then I'm going to turn to 7. Exhibit 7 is

1 another report by Detective Wiest, W-I-E-S-T?

2 A You are correct, yes.

3 Q And according to this, in the interview,
4 Tarkenton had just gotten into 4C, a skinny
5 white guy, and that when Wiest interviewed this
6 other prisoner he told the medical staff, this
7 being Tarkenton, that he does not go through
8 withdrawals. He stated -- Tarkenton stated
9 that he was arrested because he was nodding off
10 inside his vehicle and put on a probation hold,
11 and he says, "I still got a little bit."

12 Question, "Heroin?" And he said, "Yeah, that
13 he got into the jail," and, in fact, it says --
14 give me one second. I didn't highlight this.
15 I apologize. Oh, here we go. "The white guy,"
16 meaning Tarkenton, "stated that he did some
17 heroin downstairs." would the booking area be
18 downstairs from Pod 4C?

19 A Yes, but I believe he's -- while he was in
20 holding. Is that what it says? So he probably
21 would have been -- he's probably referring to
22 male dorm, which, yes, is downstairs, but so is
23 booking.

24 Q So if he is doing heroin while he is either in
25 booking or in -- can you hold one second? I'm

1 sorry.

2 (Recess taken.)

3 BY MR. CADE:

4 Q So getting back to my question, if he indicates
5 that he's doing drugs either in booking or down
6 in holding, down in the male dorm, would you
7 agree that's a failure of the system to find
8 the contraband?

9 MR. REGINATO: Object to foundation.
10 I'm also going to object to the form of the
11 question. It calls for speculation. I'm also
12 going to object that it calls for a legal
13 conclusion. Go ahead.

14 THE WITNESS: Yeah, we -- can you
15 repeat the question one more time?

16 BY MR. CADE:

17 Q Yeah. I'm just -- you know, we had talked
18 earlier about, you know, you had agreed that
19 one of the things that the jail is tasked with
20 is essentially keeping inmates safe, and I said
21 obviously, you know, we are not talking weapons
22 that could injure staff, and it's unlikely that
23 the staff is getting the drugs directly from
24 the inmates -- there is other ways to get the
25 drugs -- and if the jail is supposed to keep

1 inmates safe and you've got an inmate who is
2 doing the drugs either directly in booking or
3 in housing, is that not a failure of the jail
4 to keep the drugs out?

5 MR. REGINATO: Same objection.

6 THE WITNESS: In this particular
7 case, we certainly would have liked to prevent
8 them from coming in. I don't know that it's
9 realistic to stop 100 percent of all contraband
10 from coming into the jail. That's our goal,
11 but did this -- it appears obvious that
12 contraband did enter the facility, and it was
13 in dorm, and we wouldn't want that there.

14 BY MR. CADE:

15 Q And is it correct -- now that the body scanners
16 are present, are you, as the supervisor, the
17 jail supervisor, are you catching more
18 contraband before it gets in?

19 MR. REGINATO: Objection, calls for
20 speculation.

21 BY MR. CADE:

22 Q Are you noticing a drop in contraband?

23 A I don't know. I don't have the -- any specific
24 numbers, and sometimes those go up and down
25 based on the amount of opioid use in the

1 community, and it's probably a reflection in
2 the jail. If I were to speculate, I would say
3 that probably the use of the body scanner -- I
4 know that it's been effective in detecting
5 contraband. I don't know if there is a
6 reduction in contraband as a result of the body
7 scanner or not.

8 Q I'm sorry. You lost me there.

9 A I know we have recovered contraband and
10 detected contraband with the use of the body
11 scanner, but I don't know about, as far as the
12 numbers go, whether there has been a reduction
13 post body scanner compared to pre body scanner.

14 Q And if I were to make a request, Captain,
15 for -- I would imagine that the jail keeps
16 records in terms of deaths and drug overdoses
17 over a given period of time, correct?

18 A Yes, that's correct.

19 Q So what would I need to ask for if I wanted to
20 find out about either drugs or deaths or
21 overdoses at the jail? What would I need to
22 ask for specifically?

23 A I think that would probably cover that.
24 Specifically you would ask for the number of --
25 it would probably start by asking for instances

1 of overdoses within the Dane County Jail.
2 Probably a second request for incidents of
3 overdoses resulting in death in the Dane County
4 Jail. We would provide you -- and case numbers
5 associated with. Once you got those case
6 numbers, you could get those actual reports as
7 well.

8 Q And would they be able to -- would those
9 reports identify the basis of the drugs getting
10 in? The reason I say that is I dealt with
11 people who have had drugs in their system
12 before they got in, so they weren't consuming
13 in the jail; they were consuming out of the
14 jail. They come in, and they die or succumb to
15 an OD or through withdrawal, but would the
16 investigation identify the source of the
17 narcotics?

18 MR. REGINATO: Object to speculation,
19 foundation.

20 THE WITNESS: The reports would
21 probably indicate if we knew.

22 BY MR. CADE:

23 Q Okay. And you said there were two scanners?

24 A Yes, two scanners.

25 Q Okay. And one is just for Huber?

1 A Yes. It's on the third floor where people
2 would be coming back in from going outside,
3 yes, so people coming in and out having Huber
4 or other work-release privileges.

5 MR. CADE: Okay. Perfect. Those are
6 my questions.

7 (Proceedings concluded at 12:04 p.m.)
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1 STATE OF WISCONSIN)
2) SS:
3 COUNTY OF MILWAUKEE)
4

5 I, ALICE M. BARBELN, a Registered
6 Professional Reporter and Notary Public in and for
7 the State of Wisconsin, do hereby certify that the
8 above deposition of KERRY PORTER was recorded by me
9 on June 16, 2021, and reduced to writing under my
10 personal direction.

11 I further certify that I am not a
12 relative or employee or attorney or counsel of any
13 of the parties, or a relative or employee of such
14 attorney or counsel, or financially interested
15 directly or indirectly in this action.

16 In witness whereof I have hereunder set
17 my hand and affixed my seal of office at Milwaukee,
18 Wisconsin, this 21st day of June, 2021.
19
20
21

22 _____
23 Notary Public
24 In and for the State of Wisconsin
25

My Commission Expires: October 26, 2021.

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